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April 3, 2001

USDA REFUSES TO EXPAND REGULATION OF GENETICALLY MODIFIED PLANTS

(In re Petition of Natural Resources Defense Council)

Last week the United States Department of Agriculture (USDA) thoroughly rejected a petition filed by the environmental activist group, Natural Resources Defense Council (NRDC), that sought increased regulation of genetically modified plants. USDA's decision marked a noteworthy victory for the Washington Legal Foundation (WLF), which had filed comments strongly opposing the NRDC's request for increasing the regulatory burden for businesses that produce genetically modified corn, soybeans, and other crops.

This matter arose when NRDC filed a petition urging the USDA to adopt four courses of action. First, the NRDC proposed that the agency "conduct a rulemaking to establish prescriptive requirements for field testing and supporting information that must be provided in order to have [genetically engineered] crops deregulated." Second, the NRDC asked the agency to "initiate an independent research program to assess the potential risks from such crops and the data necessary to ensure that they do not pose an environmental risk. Third, the NRDC also requested the USDA to "complete an environmental impact statement, including the potential international implications, of its data-requirement regulations, pursuant to the National Environmental Policy Act." Fourth, the NRDC asked the agency to "immediately withdraw the nonregulated status of two varieties of virally resistant squash."

In its comments filed with the USDA, WLF urged the Department to reject NRDC's petition for three reasons. First, WLF argued that the NRDC's wrongly assumed that "agricultural biotechnology" or "commercial-scale releases of transgenic crops" pose "potentially serious environmental" or "ecological" risks because of the nature of the underlying technology. A report by the National Academy of Sciences (NAS) says otherwise. It denies that GM crops present any "unique hazards," based solely on the nature of DNA technology. On the contrary, the NAS Report went out of its way to emphasize that "[a]ssessment of the risks of introducing *rDNA*-engineered organisms into the environment should be based on the nature of the organism and the environment into which it is introduced, *not* on the method by which it was produced." Second, WLF pointed out that even if the NAS position were open to question, the NRDC's petition gave the USDA no

evidence on which to base a wide-ranging amendment of its current practice of evaluating petitions on a case-by-case basis. Risks that remain merely *unforeseen* or *potential* supply no reasonable basis for the USDA to upend current regulatory practices. Third, WLF argued that, if anything, the NAS Report supports the USDA's current practice. What the NRDC criticizes as "an *ad hoc* regulatory approach," actually fits well with the Academy's recognition that "the magnitude of risk varies on a product by product basis."

"Increasing the regulatory burden on companies that produce genetically modified crops makes no sense for consumers or businesses," said Shawn Gunnarson, WLF's Senior Counsel for Litigation Affairs. "We applaud the USDA's decision to reject activist calls for greater regulation in this area."

The Washington Legal Foundation is a public interest law and policy center with supporters in all fifty states. It devotes a significant portion of its resources to defending and promoting the principles of free enterprise and individual rights.

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